

Bathae :: Dunne :: LLP

FILED UNDER SEAL

May 31, 2023

Via CM/ECF

Re: Klein v. Meta Platforms, Inc., No. 3:20-cv-08570-JD (N.D. Cal.)

Dear Judge Donato:

Advertiser Plaintiffs (“Advertisers”) respectfully request that the Court find that a *prima facie* case exists under the crime-fraud exception with respect to certain communications currently being withheld by Defendant Meta Platforms, Inc. (“Facebook”) as attorney-client privileged. The communications at issue relate

[REDACTED]

On May 15, 2023, Advertisers sent Facebook a nineteen-page single-spaced letter providing screenshots, quotations from documents, and evidentiary citations setting forth the company’s applicable conduct; analyzing that conduct under 18 U.S.C. § 2511, *et seq.* and under the Ninth Circuit’s crime-fraud test, *see In re Grand Jury Investigation*, 810 F.3d 1110, 1113 (9th Cir. 2016); and seeking a prompt meet-and-confer.¹ Over the next two weeks, Advertisers sent additional letters and emails. On May 31, the parties met and conferred and reached impasse.

I. [REDACTED] Targets Competition By [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Advertisers stand ready to provide full briefing, exhibits, and/or Advertisers’ letters to Facebook at the Court’s request.

FILED UNDER SEAL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FILED UNDER SEAL

[REDACTED]

The intended and actual result of this program was to harm competition, [REDACTED]

[REDACTED]

[REDACTED]

II. [REDACTED] Violated the Wiretap Act²

18 U.S.C. § 2511(1)(a) criminalizes “intentionally intercept[ing] . . . any electronic communications,” and subsection (d) of the same statute criminalizes “us[ing]” such intercepted communications. [REDACTED] conduct squarely meets the statutory proscriptions in subsections (a) and (d), including as to “person,” “intercept,” “intentionally,” and “use” within the meaning of the statute. *See generally* PROSECUTING COMPUTER CRIMES, Computer Crime and Intellectual Property Section Criminal Division, U.S. Dep’t of Justice (2d ed.) (2010), at 59-87.

Moreover, [REDACTED]

[REDACTED] did not fall within any statutory exception or defense. In particular, [REDACTED]

[REDACTED] *see* 18 U.S.C. § 2511(2)(d), [REDACTED]

[REDACTED]

² Advertisers provided Facebook with a six-page version of this analysis, and would be happy to provide a lengthier analysis to the Court if the Court desires it.

FILED UNDER SEAL

Respectfully submitted,

By: Brian J. Dunne
*On Behalf of Interim Co-Lead Counsel
for the Advertiser Classes*

SCOTT+SCOTT ATTORNEYS AT LAW LLP

/s/ Amanda F. Lawrence

Amanda F. Lawrence (*pro hac vice*)
alawrence@scott-scott.com
Patrick J. McGahan (*pro hac vice*)
pmcgahan@scott-scott.com
Michael P. Srodoski (*pro hac vice*)
msrodoski@scott-scott.com
156 South Main Street, P.O. Box 192
Colchester, CT 06415
Tel.: (860) 537-5537

Patrick J. Coughlin (CA 111070)
pcoughlin@scott-scott.com
Carmen A. Medici (CA 248417)
cmedici@scott-scott.com
Hal D. Cunningham (CA 243048)
hcunningham@scott-scott.com
Daniel J. Brockwell (CA 335983)
dbrockwell@scott-scott.com
600 W. Broadway, Suite 3300
San Diego, CA 92101
Tel.: (619) 233-4565

Patrick J. Rodriguez (*pro hac vice*)
prodriguez@scott-scott.com
230 Park Avenue, 17th Floor
New York, NY 10169
Tel.: (212) 223-6444

BATHAE DUNNE LLP

/s/ Yavar Bathaee

Yavar Bathaee (CA 282388)
yavar@bathaeedunne.com
Andrew C. Wolinsky (CA 345965)
awolinsky@bathaeedunne.com
Adam Ernette (*pro hac vice*)
aernette@bathaeedunne.com
Priscilla Ghita (*pro hac vice*)
pghita@bathaeedunne.com
Chang Hahn (*pro hac vice*)
chahn@bathaeedunne.com
445 Park Avenue, 9th Floor
New York, NY 10022
(332) 322-8835

Brian J. Dunne (CA 275689)
bdunne@bathaeedunne.com
Edward M. Grauman (*pro hac vice*)
egrauman@bathaeedunne.com
Andrew M. Williamson (CA 344695)
awilliamson@bathaeedunne.com
901 S. MoPac Expressway
Barton Oaks Plaza I, Suite 300
Austin, TX 78746
(213) 462-2772

Allison Watson Cross (CA 328596)
across@bathaeedunne.com
3420 Bristol St., Ste 600
Costa Mesa, CA 92626-7133

*Interim Co-Lead Counsel for the Advertiser
Classes*

FILED UNDER SEAL

FILER ATTESTATION

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: May 31, 2023

By: /s/ Brian J. Dunne
Brian J. Dunne